

TOWN OF KITTERY, MAINE  
BOARD OF APPEALS

APPROVED  
July 24, 2012

**Members present:** Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa, Niles Pinkham  
**Members absent:** None

**Staff:** Heather Ross, Assistant Code Enforcement Officer

The meeting was called to order at 7:07 p.m.  
Pledge to the Flag

**Chairman Gardner** advised the applicants of the minimum number of members present and asked if any applicants present wished to postpone their review before the Board. There were none.

The Board has the authority under 16.1.5.2.3, Variation Request, to hear this item.

**ITEM 1 - SGT Training** requesting a Variance to the terms of Title 16 Section 3.2.1D in order to construct a new single family dwelling on property located at 34 Adams Road, Map 60 Lot 34A, zoned Rural Residential.

**Mr. Pinkham** noted he spoke with the applicant regarding a work project many years ago, but has no standing association with Mr. Tetreault. Board members, the applicant and the CEO concurred that Mr. Pinkham did not appear to have any conflicts in regard to his ability to consider this request.

**Mr. Tetreault** explained he is requesting side and front yard setback variances for this parcel. He noted most of the existing homes on this dead-end road currently sit within current setback requirements. The condition of the parcel, with a large amount of ledge, has made it unaffordable to build within the building envelope established by the setback requirements. He also noted neighbors are in support of this request, but could not attend the meeting. A supportive letter from Ms. Ethel Holt (attached) was provided to the Board and referenced.

There was no public comment. The CEO provided:

1. This is a vacant, conforming lot in the Rural Residential zone. Mr. Tetreault has submitted an application to construct a new single family house lot.
2. The Rural Residential zone requires a minimum 40-foot front property line setback and 20-foot side yard setbacks. Mr. Tetreault has submitted a plan for the new home to be set back 20 feet from the front property line, and 10 feet from the side property line.

**Mr. Boyle** noted the undue hardship test is that the hardship is not the fault of the applicant, however, most of the testimony provided by the applicant references personal financial hardship. Unfortunately, financial hardship cannot be considered by the Board. **Mr. Costa** noted other criteria to consider is whether the property can yield a reasonable return without a variance. **Mr. Pinkham** noted he believes reasonable return should include a house on a house lot. **Mr. Wilson** stated under title 16.6.4.2.A.3.D the hardship cannot be created by the applicant or a prior owner. The odd shape of the lot with the limited building envelope was created by a previous owner. Additionally, he believes the lot does have a buildable area, which the Board

must consider regarding reasonable return. Discussion followed regarding the road frontage and the unusual shape of the lot, created by Mr. Tetreault in 2010. **Mr. Tetreault** explained there is a lot of ledge in the building envelope, and the cost to remove the ledge would not provide a reasonable return on his investment. **Mr. Pinkham** asked about the averaging of setbacks. The CEO stated the average is determined by the average on either side of the lot in question, and in this case the averaging did not reduce the setback.

**Mr. Pinkham moved** to grant a variance request to SGT Training and Development, c/o Stephen Tetreault to the terms of Title 16 Section 3.2.1.D in order to construct a new single family dwelling on property located at 30 Adams Road, Map 60 Lot 34A, zoned Rural Residential, and reduce the required 40-foot front yard setback to 20 feet and side yard setbacks from 20 feet to 10 feet.

**Mr. Wilson seconded**

**Motion fails with 0 in favor; 3 against; 2 abstentions (Pinkham and Costa)**

### **Findings of Fact**

1. A variance request was received from SGT Training and Development to reduce the required 40-foot front yard setback to 20 feet and side yard setbacks from 20 feet to 10 feet.
2. The property is located at 30 Adams Road, Map 60 Lot 34A, in the Rural Residential zone.
3. There was no public comment for or against the variance request.
4. A letter of support was received from Ethel Hold, 34 Adams Road, an abutter.
5. The lot is vacant and conforming.
6. Mr. Tetreault testified that placing the structure within the building envelope was unaffordable due to the abundance of ledge.
7. It was testified that approximately 70% of homes on Adams Road are located less than the required setbacks.
8. The Board discussed the unusual lot shape and size, and whether this created the hardship.
9. The Board determined the lot had a buildable area without setback reductions, as illustrated by the building envelope.

**Mr. Costa moved** to accept findings as read

**Mr. Boyle seconded**

**Motion carries with 3 in favor; 0 against; 2 abstentions (Pinkham and Costa)**

### **Conclusion**

Title 16.6.4.2.A.3.d states: *The hardship is not the result of action taken by the applicant or a prior owner.* The Board found the prior owner created the unusual lot size. Additionally, a building envelope was illustrated on the plan showing the required setbacks could be met.

**Mr. Boyle moved** to accept the conclusion as read

**Mr. Costa seconded**

**Motion carries with 3 in favor; 0 against; 2 abstentions (Pinkham and Costa)**

Chairman Gardner advised this decision may be appealed to Superior Court within 45 days.

The Board has authority under Title 16.1.5.2.F.4, Miscellaneous Variation Request, to hear this item.

**ITEM 2** - Stephen A. Hynes Trust requesting a Miscellaneous Variation Request to the terms of Title 16 Section 8.12.3 in order to replace a mobile home on property located at 6 Cutts Road, Map 60 Lot 21-66, zoned Mixed Use.

**Tom Manning**, Manager, Yankee Mobile Home Park, explained they wished to replace a previously existing 12'x60' mobile home with a 13'8' x 56' mobile home at Lot 21-82 (not 21-66). The setbacks currently do not meet the code.

There was no public comment.

The CEO provided:

1. The property is a conforming lot with nonconforming structures in the Mixed Use Zone. This is a vacant lot in the mobile home lot.
2. Title 16.8.12.3.D.1 requires a minimum ten-foot rear yard setback from the lot. The proposed rear yard setback is four feet, not more nonconforming than the previous mobile home which had no setback from the rear lot line.
3. There is a required minimum 20-foot separation between units. The proposed separation is 13 feet and 16 feet, no more nonconforming than the previous mobile home which had separations of 9 feet and 12 feet.

**Mr. Costa** had no objections

**Mr. Wilson** stated the proposed mobile home is no closer than the prior mobile home on the lot and, in fact, the separation and set backs are greater than the prior structure.

**Mr. Pinkham** had no objections

**Mr. Boyle** concurred with Mr. Wilson.

**Mr. Pinkham moved** to grant a miscellaneous variation request to the terms of Title 16.8.12.3 for property located at 6 Cutts Road, Map 60 Lot 21-82, in the Mixed Use zone.

**Mr. Boyle seconded**

**Motion carries unanimously**

### **Findings of Fact**

1. Mr. Tom Manning representing the Stephen A. Hynes Trust requested a Miscellaneous Variation to Title 16.8.12.3
2. The request is to place a 13'8"x56' mobile home on a lot previously supporting a 12'x60' mobile home which was removed.
3. The prior mobile home had no rear setback and had side separations of 9 feet and 12 feet. The current mobile home will have a 4 foot rear setback and 14 and 16-foot side setbacks.
4. The lot is conforming with non-conforming structures.
5. Title 16.8.12.3.D.1 requires a minimum 10-foot rear yard setback and 20-foot side separations.

**Mr. Costa moved** to accept the Findings as read

**Mr. Boyle seconded**

**Motion carries unanimously**

**Conclusion**

The Board has the authority under Title 16.7.3.5.5 Nonconforming Structures Repair and Expansion allowing the Board to grant a miscellaneous variation as the nonconformance is no greater.

**Mr. Costa moved** to accept the Conclusion as read

**Mr. Pinkham seconded**

**Motion carries unanimously**

Chairman Gardner advised that this decision may be appealed to Superior Court within 45 days.

The minutes of April 24, 2012 were unavailable for review.

**Mr. Wilson moved to adjourn**

**Mr. Pinkham seconded**

**Motion carried unanimously by all members present**

The Kittery BOA meeting of July 24, 2012 adjourned at 7:46 p.m.

Submitted by Jan Fisk, July 30, 2012

ATTACHMENT

Town of Kittery  
Board of Appeals  
200 Paper Road  
Kittery, ME 03904

54 Wilcox Road  
Kittery, ME 03904  
July 19, 2012

R. S. T. Fleming  
Appeals Hearing 7:30 AM - 7:45 PM

Your notice of Public Hearing has been received - which I will be unable to attend. This is to advise that I have no objection to the variance which my closest neighbor has requested by allowing a single family dwelling to be constructed on the property in question.

My phone number is 207-439-0037.

Robert E. Holt

\*Not at the property.

